



PUBLIC NOTICE

Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Fax-On-Demand 202 / 418-2830
TTY 202 / 418-2555
Internet: <http://www.fcc.gov>
<ftp.fcc.gov>

DA 03-387

Released: February 7, 2003

DOMESTIC SECTION 214 APPLICATION FILED FOR CONSENT TO ACQUISITION OF MPOWER ASSETS IN OHIO BY LMDI

STREAMLINED PLEADING CYCLE ESTABLISHED

WC Docket No. 03-31

On January 24, 2003, Mpower Communications Corp. ("Mpower") and LMDI Telecommunications, Inc. ("LMDI") (together "Applicants") filed an application, pursuant to section 63.04 of the Commission's rules,¹ for consent to transfer certain assets of Mpower, which are located in Ohio, to LMDI. Through this transaction, Mpower will transfer all of its network assets in Ohio, including switches, collocation equipment and incumbent local exchange carrier (LEC) leased facilities, as well as customers to LMDI.²

Applicants assert that this transaction is entitled to presumptive streamlined treatment pursuant to section 63.03(b)(2)(i) of the Commission's rules because (1) the proposed transaction will result in LMDI having a market share in the interstate, interexchange market of less than 10 percent; (2) LMDI will provide competitive telephone exchange services or exchange access services (if at all) exclusively in geographic areas served by a dominant LEC that is not a party to the transaction; and (3) neither Mpower nor LMDI is dominant with respect to any service.

Mpower is a competitive LEC currently providing local, long distance, switched access, other access, DSL, and Internet access services in 27 markets in several states. Mpower states that it is continuing its long-term plan for financial viability by bringing geographic concentration to its business and transitioning its customers and assets in Florida, Georgia, Ohio, Michigan, and Texas to other service providers.³ Mpower is wholly owned by Mpower Holding

¹ 47 C.F.R. § 63.04; *see* 47 U.S.C. § 214.

² Applicants state that they will also file applications to transfer control of related international services. Any action on this domestic 214 application is without prejudice to Commission action on other pending applications.

³ This application pertains to Ohio only.

Corporation, a publicly traded Delaware corporation with a principal place of business at 175 Sully's Trail, Suite 300, Pittsford, NY 14534. Mpower Holding Corporation does not provide telecommunications services in any jurisdiction and holds no regulatory licenses from any state or federal regulatory agency.

LDMI is also a competitive LEC currently providing local, long distance, switched access, other access, DSL and internet access services in multiple markets in the states of Michigan and Ohio. It also provides long-distance service to customers nationwide. LDMI is headquartered in Hamtramck, Michigan.

Applicants seek consent for Mpower to transfer all of its assets and associated customers in Cleveland and Columbus, Ohio to LDMI. Applicants state that the proposed transaction will allow Mpower to enhance its competitive position by providing Mpower with greater flexibility in obtaining financing, which will yield benefits for Mpower and allow Mpower to continue operations in the long term. Applicants state that in July 2002, Mpower completed a financial recapitalization that retired approximately \$600 million in long-term debt and preferred stock. As of January 3, 2003, Mpower's remaining \$50 million in long-term debt was also retired. Coupled with the proposed transaction, the resulting new cash, reduced operational cost structure and new financing, Applicants expect to significantly improve Mpower's long-term viability.

Applicants state that the proposed transaction is not detrimental to the public interest because customers currently being served by Mpower will be served by LDMI after the proposed transfer of assets. Because affected customers will be served by LDMI, the proposed transaction will not result in a decrease in currently available services or an increase in rates charged to customers. Moreover, Applicants assert that grant of this transaction will serve the public interest, convenience and necessity by enabling LDMI to strengthen its competitive presence in Ohio and to concentrate its resources and expertise on providing innovative and diversified service offerings.

GENERAL INFORMATION

The transfer of assets application identified herein has been found, upon initial review, to be acceptable for filing as a streamlined application. The Commission reserves the right to return any transfer of control application if, upon further examination, it is determined to be defective and not in conformance with the Commission's rules and policies. Interested parties may file **comments within 14 days** and **reply comments within 21 days** of this notice.⁴ Unless otherwise notified by the Commission, an applicant is permitted to transfer control of the domestic lines or authorization to operate on the 31st day after the date of this notice.⁵

⁴ See 47 C.F.R. § 63.03(a).

⁵ Such authorization is conditioned upon receipt of any other necessary approvals from the Commission in connection with the proposed transaction.

Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121 (1998).

Comments filed through the ECFS can be sent as an electronic file via the Internet to <<http://www.fcc.gov/e-file/ecfs.html>>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistrionix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

In addition, one copy of each pleading must be sent to each of the following:

- (1) the Commission's duplicating contractor, Qualex International, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554; e-mail: qualexint@aol.com; facsimile: (202) 863-2898; phone: (202) 863-2893.
- (2) Tracey Wilson, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C437, Washington, D.C. 20554; e-mail: twilson@fcc.gov, and
- (3) Dennis Johnson, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 6-A461, Washington, D.C. 20554; e-mail: dcjohnso@fcc.gov, and

- (4) William Dever, Competition Policy Division, Wireline Competition Bureau, 445 12th Street, S.W., Room 5-C266, Washington, D.C. 20554; e-mail: wdever@fcc.gov; and
- (5) Nandan Joshi, Office of General Counsel, 445 12th Street, S.W., Room 8-A820, Washington, D.C. 20554; e-mail: njoshi@fcc.gov.

Filings and comments are also available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC, 20554. They may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC, 20554, telephone 202-863-2893, facsimile 202-863-2898, or via e-mail qualexint@aol.com.

For further information, please contact Tracey Wilson, at (202) 418-1394, Dennis Johnson (202) 418-0809, or William Dever, Competition Policy, Wireline Competition Bureau at (202) 418-1578.

- FCC -